

RECEIVED

Before the
Federal Communications Commission
Washington, D.C. 20554

SEP 07 1999

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Section 73.606(b),)	MM Docket No. 99-238
Table of Allotments,)	RM-9669
TV Broadcast Stations.)	
(North Pole and Plattsburgh, New York))	
)	
Amendment of Section 73.622(b),)	
DTV Table of Allotments,)	
DTV Broadcast Stations.)	
(North Pole and Plattsburgh, New York))	

To: Chief, Allocations Bureau
Policy & Rules Division
Mass Media Bureau

**REPLY COMMENTS OF
MT. MANSFIELD TELEVISION, INC.**

Pursuant to Section 1.415 of the Commission's rules, Mt. Mansfield Television, Inc. ("Mt. Mansfield"), the licensee of WCAX-TV, Channel 3, Burlington, Vermont, respectfully files these reply comments in opposition to the comments filed by Hearst-Argyle Stations, Inc. ("WPTZ"), licensee of WPTZ, Channel 5, North Pole, New York, and WPTZ-DT, Channel 14, North Pole, New York.

Mt. Mansfield has demonstrated in its comments that the Commission's established allotment priorities require denial of WPTZ's petition, in order to preserve the right of Lake Placid area viewers to receive their sole local television service, not only during the period of analog service but also after the transition to DTV. The following developments, since the filing of Mt. Mansfield's comments, underscore this point.

No. of Copies rec'd 074
List ABCDE

1. WPTZ's petition asserts that it "is not . . . proposing to relocate its digital transmitter facilities." Petition at 4. In a press release issued last week (copy attached hereto), WPTZ has confirmed its intention, as reflected in its previous conduct over the past three years, to relocate its digital transmission facilities to Mt. Mansfield in Vermont.

2. WPTZ has conceded that it has no confidence in its ability to provide digital service to the Tri-Lakes area (or to Franklin County) from Mt. Mansfield. Last week, WPTZ's President and General Manager acknowledged that "[w]e don't know for certain where the cutoff (for the [DTV] signal) will be . . ."^{1/}

3. In its recent press release, WPTZ has suggested that its existing analog service from Terry Mountain will continue "well into the foreseeable future." This disingenuous statement ignores the fact that Congress has directed the Commission to terminate all authority to broadcast on analog channels after December 31, 2006.^{2/}

4. In connection with WPTZ's claim that changing its community of license to Plattsburgh would serve the public interest, attached are copies of (a) two recent news releases

^{1/} Plattsburgh Press-Republican, Sept. 2, 1999, at 1 (copy attached). Although the Commission has generally held that allegations based upon newspaper articles are inadmissible as hearsay, *see e.g., American Mobile Radio Corp.*, 13 FCC Rcd 8829 (1997), it has endorsed exceptions to the hearsay rule recognized by the federal courts. *See e.g., Horne Industries*, 94 FCC 2d 815 (1983); *Herbert L. Rippe*, 44 FCC 2d 91 (1973). This declaration against interest is admissible as an exception to the hearsay rule. *See Fed.R.Evid.* 804(b)(3).

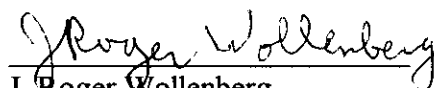
^{2/} *See* 47 U.S.C. § 309(j)(14); *Advanced Television Systems*, Memorandum Opinion and Order on Reconsideration of the Fifth Report & Order, MM Docket No. 87-268 (February 23, 1999). This date may be extended by the Commission only if (1) digital-to-analog converter technology is not generally available in the market or (2) at least 15% of television households in the market do not subscribe to a cable, satellite, or other service that carries stations' digital programming *and* cannot otherwise receive it (in analog or digital). *Id.* ¶ 45, citing 47 U.S.C. § 309(j)(14)(B).

from the mayor of Plattsburgh, strongly opposing WPTZ's petition, and (b) a resolution of the Plattsburgh city council last week, to the same effect (all attached hereto). As noted in Mt. Mansfield's comments, such statements of community leaders are highly relevant to WPTZ's argument.

Conclusion

For the reasons stated above and in Mt. Mansfield's comments in the above-captioned proceeding, WPTZ's petition should be denied.

Respectfully submitted,



J. Roger Wollenberg

Joel Rosenbloom

William R. Richardson, Jr.

Michael A. McKenzie

Counsel for Mt. Mansfield Television, Inc.

September 7, 1999

MAYOR RABIDEAU IS JUST PLAIN WRONG.

Plattsburgh Mayor Clyde Rabideau says he opposes WPTZ's bid to change its community of license from North Pole, NY to Plattsburgh. He says the move is part of a plan by WPTZ to move its transmitting tower from Terry Mt. NY to Mt. Mansfield in Vermont.

The mayor is flat wrong.

WPTZ has no plans—none—to move its tower from Terry Mountain. WPTZ will continue broadcasting its current analog signal from Terry Mountain well into the foreseeable future.

WPTZ has a mandate from the FCC to provide a digital signal starting in 2002. Therefore, because of this federal mandate, WPTZ is seeking a site for an ADDITIONAL television transmitter.

In addition, because the federal government has requested that stations share towers in the digital age, in an attempt to reduce environmental impact on mountain areas, WPTZ is working with every television station in the region to share digital transmission towers on Mt. Mansfield.

All of the region's stations expect to offer digital transmissions by 2003. But even when that happens, WPTZ will continue broadcasting its current signal from Terry Mountain. Viewers will continue to receive exactly the signal they receive now.

The station is also committed to finding other technologies in the future to allow it to continue providing that service even when it stops broadcasting analog signals and goes "full digital." The earliest "full digital" transmission date possible is the year 2006; most industry experts believe it will be much later than that. At least 85% of the viewers in the region will have to buy digital TV sets for their homes before any station is required to cease analog transmission and go "full digital."

Mayor Rabideau ignores the fact that WPTZ's main studios and offices are located in Plattsburgh, as they have been since the station began broadcasting in 1954. He ignores the fact that the station has stepped up its community presence, sponsorship of important area events, live coverage of news, and that its personnel are more active in North Country community organizations (Chamber of Commerce, United Way, Workforce Investment Board and others) than at any time in the station's past.

"We do much of our business in Plattsburgh. Our main studio is here. It makes sense that the largest city in our area—the one in which we live—should be our place of license," says WPTZ President and General Manager Paul Sands. "I'm sorry Mayor Rabideau has spoken out without knowing the facts."

Transmitter site sparks TV wrangle

By JOE LOTEPLIO
Staff Writer

PLATTSBURGH — A battle over transmitter sites has two local television stations thrusting the camera in each other's faces.

WPTZ Channel Five, which transmits its signal from Terry Mountain in Peru, wants to acquire a transmitter site across Lake Champlain on Mt. Mansfield in Vermont.

The move, according to WPTZ President and General Manager Paul Sands, will allow the station to best deliver a digital television signal in the future.

But rival station WCAX Channel Three, out of Burlington, Vt., says the transmitter relocation could eliminate thousands of North Country viewers, which would put a serious dent in national advertising revenues for all area television stations.

"This is serious business for us and WPTZ, but they seem to have not thought this through that way," said WCAX President and General Peter Martin.

From analog to digital
WPTZ now delivers an analog signal from Terry Mountain in

North Pole (about 35 miles south of Plattsburgh near Wilmington) to Plattsburgh.

The FCC requires that a station's community of license be served with a top-grade signal. WPTZ might not be able to do that for North Pole if it has to transmit digitally from Mt. Mansfield, because of the distance.

But Plattsburgh, which is about 40 miles from Mt. Mansfield, could be served with a quality signal.

Sands said the FCC has urged stations to work together and share transmitter sites to cut down the environmental impact of propping up towers all over the region.

Since there are already towers on Mt. Mansfield, it makes sense for WPTZ to locate there, Sands said.

Also, Mt. Mansfield is higher than Terry Mountain, which will allow the signal to reach farther.

WCAX's Martin said that simply is not the case.

"When you move the signal 35 miles to the east, it won't reach as far to the west," he said.

He claims the move would eliminate about 10,600 WPTZ viewers in Essex County, 39,000 in Franklin County and nearly 33,000 in St. Lawrence County.

About 83,000 viewers potentially lost in the market amounts to about 10 percent of the 731,000 total.

Advertising loss

The market is now ranked 92nd in the nation, but if it lost 10 percent of its viewers, it surely would drop out of the top 100, Martin said.

That would be devastating.

"That will have a serious impact in the national spot (advertising) market," Martin said.

"They (big national advertisers) will either ignore us or not spend as much money."

Sands said Martin is just spouting scare tactics.

"You can make a worst-case scenario about anything," Sands said. "We could say the same things about WCAX."

Sands does acknowledge that it is uncertain whether a digital signal from Mt. Mansfield would serve the tri-lakes area or Franklin County.

"We don't know for certain where the cutoff (for the signal) will be, but we are working to get the maximum out of our digital service, and we will find a way to

Please see TV Page A5 ▶

TO CONTACT THE FCC



Peru. It reaches all of Clinton County, most of Essex and Franklin counties, much of St. Lawrence County and most of Vermont.

The Federal Communications Commission is requiring all stations to begin transmitting a digital signal in 2003.

Eventually, most television viewers will have digital televisions rather than analog models.

Sands believes that won't happen until 2006 or later. WPTZ plans to continue broadcasting its analog signal at least until 2006, along with the digital signal.

WPTZ is taking the first step toward obtaining a digital-tower site on Mt. Mansfield.

Loss of viewers?

The station has applied to have the station's "community of license" designation changed from

TV: Mayor Rabideau opposes station plan

▶ From Page A1

serve all markets."

Cable television might be one way, he said.

News coverage

In Lake Placid, Essex County Visitors Bureau chief James McKenna said a loss of local television coverage could have a serious effect.

"Both Channel Three and Five serve a purpose in communicating news of regional interest to this area," McKenna said. "To lose one would certainly be a loss."

McKenna pointed to the recent Ironman Triathlon competition in the Lake Placid area.

"Television coverage drew a lot of attention to this event, and it brought people out."

The battle has other local interests weighing in as well.

Plattsburgh Mayor Clyde Rabideau issued a news release Wednesday opposing WPTZ's plan.

Rabideau said that putting a digital transmitter in Vermont will further shift the focus of the station's news coverage to the Green Moun-

tain State.

"If they want to broadcast digitally out of Terry Mountain, then it's a different story," the mayor said. "But they want to go to Vermont, where they think the big bucks are."

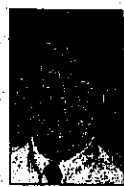
Rabideau urged viewers to voice their opinions to the FCC before the public comment cutoff date of Sept. 7 for WPTZ's application for a change in community of license.

Sands said the mayor is completely off base.

He said WPTZ's news station and business offices will remain in Plattsburgh, no matter where the transmitter is located.

He said the station has stepped up its community efforts, pointing to three live newscasts from the Mayor's Cup in downtown Plattsburgh in July and sponsorship of many other local events.

"We are taking an active part in the community we live in," Sands said. "We are a regional television station, and we have to serve both sides of the lake, and we do our darndest to do so."



"They want to go to Vermont, where they think the big bucks are,"
Mayor Rabideau

Joe Lotempho can be reached by e-mail: lotempho@pressrepublican.com

City of Plattsburgh, Office of Mayor

Hon. Clyde M. Rabideau, Jr. and Mayor Tel 518-583-7701 Fax 518-581-7387

News Release

Mayor Says "No" to WPTZ--Channel 5--Move to Vermont

PLATTSBURGH—September 1—With just six days to go before public input is cut off by the Federal Communications Commission (FCC), Plattsburgh's Mayor, Clyde Rabideau, announced today that he opposes the application by WPTZ, Channel 5, to delete their North Pole, NY, "community of license."

The mayor also opposes the station's desire—as evidenced by a copies of correspondence to the FCC—to move their transmitting tower from Terry Mountain, NY, to Mt. Mansfield, VT, effectively blacking out most of Franklin County and the Tri-lakes area of Essex County. Such a scenario, says the mayor, "Sets the stage for us to be further absorbed by Vermont news and orientation and to lose our identity."

The Mayor's response comes after learning that the corporation owning Channel 5—Hearst-Argyle—had applied to the FCC to move its community of license to Plattsburgh from Wilmington's North Pole. The 35-mile move, "though appearing innocent," said Rabideau, "means that a clear 'Grade A' signal is then only required in Plattsburgh and is no longer required for Wilmington and the Tri-Lakes."

According to Rabideau, such a scenario is only "step 1" and will then set the stage for a more debilitating "step 2."

"Step 2," says Rabideau, "is moving the transmitting tower to Vermont and basing their programming and news coverage more and more upon what's happening in Vermont and less and less on what's happening on our side of Lake Champlain."

Pointing to the recent loss of local radio stations and TV Fox 44 to Vermont locations and the increasing loss of local coverage on Channel 5 News, Rabideau commented, "We're in a fight for our own airwaves and our own coverage, so we can't let this go by without standing up for our rights. The airwaves belong to the people."

Referring to the application—that is largely unknown to the general public—Mayor Rabideau said, "Channel 5 is trying to increase its profits at the North Country's expense by increasing broadcast area in Vermont and decreasing broadcast area in the Adirondacks."

The five-term mayor continued by saying, "This side of the lake gave up its public air rights decades ago and made Channel Five what it is today and I say it's time for them to stick by us as we recover from the Bass closure and aggressively move into the next millennium."

Rabideau is urging North Country residents to voice their objection to the move by writing the FCC, Air-Allocations Branch, the Portals, 445 Twelfth Street, SW, Washington, DC, 20554. The FCC will take public comment until September 7.

Office of the Mayor - Plattsburgh, New York
Tel: 518-563-7701 Fax: 518-461-7367

Newsrelease

Common Council Votes Against Channel 5 Move

PLATTSBURGH—Sep 3—At Last night's regular meeting in City Hall, the Plattsburgh City Council passed a resolution voicing its objection to a proposal to the Federal Communications Commission (FCC) from Hearst-Argyle—owners of WPTZ Channel 5—to move their "community of license" from North Pole, NY, to Plattsburgh.

The move will allow WPTZ Channel 5 to deliver less than a "Grade A" signal to North Pole and the Tri-Lakes area.

The decreased signal requirement in the Adirondacks—coupled with Channel 5's desire to establish their digital tower on Mt. Mansfield in Vermont—means further erosion of North Country programming and absorption by Vermont news and interests, according to most city councilors.

Ward 2 Councilor Jack Stewart commented, "Those air waves belong to the people and we have every right to protect them for Plattsburgh and the North Country and not get sucked into Vermont."

Ward 5 Councilor Shirley O'Connell said, "It's the responsibly of this city council to stand up for Plattsburgh and the North Country and keep as much programming here as we can."

Mayor Clyde Rabideau weighed-in on the issue, saying, "If Channel 5 gets that tower on Mt. Mansfield in Vermont, then expect to see news about Western and Southern Vermont—in places like Brattleboro, St. Johnsbury and White River Junction—and even in Concord, New Hampshire, and less and less about the North Country."

Rabideau also said that local businesses will find advertising on Channel 5 to be lot more expensive should the station increase its reach to New Hampshire and all of Vermont. Said Rabideau, "If our local businesses think it costs a lot now to advertise on Channel 5, just wait until they've got to pay for advertising in Hannaford, New Hampshire. The costs will knock most of our businesses out of the TV market all together."

Ward 3 Councilor Bill Berman also voted for the measure, with Ward 1 Councilor Harold Hicks and Ward 6 Councilor Dan Stewart siding with Channel 5.

The resolution will now be forwarded to the FCC in time to meet the public input deadline of September 7.

REGULAR MEETING OF THE COMMON COUNCIL
OF THE CITY OF PLATTSBURGH, NEW YORK
HELD ON SEPTEMBER 2, 1999
6:00 P.M.

AGENDA

1. Present:

Mayor Rabideau, Councilors Harold Hicks (W1), John Stewart (W2), William Berman (W3), Melissa Penfield (W4), Shirley O'Connell (W5), Daniel Stewart (W6)

Absent:

2. Minutes of Previous Meeting(s)

RESOLVED: That the Minutes of the Common Council meeting held August 26, 1999, are hereby ordered approved and placed on file among the public records of the City Clerk's Office.

By Councilor _____; seconded by Councilor _____;

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart

3. Payrolls of various departments

RESOLVED: That the payrolls of the various Departments of the City of Plattsburgh for the week ending September 1, 1999 in the amount of \$194,121.42 are hereby authorized and allowed, and the Mayor and City Clerk are hereby empowered and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor _____; seconded by Councilor _____;

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart

4. Reports of City officers:

There are no reports this evening.

5. Audit of Claims.

RESOLVED: That the bills approved by the Auditing Committee of the Common Council in the amount of \$593,576.80 are hereby authorized and allowed, and the Mayor and City Clerk (where required) are hereby authorized and directed to sign warrants drawn on the City Chamberlain for the payment thereof.

By Councilor _____; seconded by Councilor _____;

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart

RM 9/2/9

GENERAL FUND

FROM: Contingency
01-19-1900-1990-0-4430

\$15,000.00

RM 9/2/99

TO: Celebrations
01-70-7550-0-0-4430

\$15,000.00

2. Letter from the Recreation Department requesting authorization for the Mayor to enter into an agreement with Bay Fireworks for the December 31 display.

RESOLVED: That the budget transfer request in the amount of \$15,000 to fund the fireworks for the December 31 display and authorization for the Mayor to enter into an agreement with Bay Fireworks is hereby approved.

By Councilor _____; seconded by Councilor _____,

Discussion: _____

ACTION TAKEN:

Adopted _____ Defeated _____ Tabled _____ Withdrawn _____

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart

Follow up action: _____

C. Bids Received-

1. Letter from the City Engineer recommending award of Contract 99-40, 1999 City Street Paving, to Carter's Trucking & Blacktopping, Inc., Morrisonville, New York for the unit prices quoted and total estimated cost of \$76,038.00.

RESOLVED: That in accordance with the recommendation of the City Engineer, the Common Council hereby awards Contract 99-40, 1999 City Street Paving, to Carter's Trucking & Blacktopping, Inc., Morrisonville, New York for the unit prices quoted and total estimated cost of \$76,038.00, it being understood there are sufficient funds available in the 1999 Street Construction Phase II Capital Budget (H5110.84).

RM 9/2/99

E. Correspondence -

1. Letter from the Executive Director of the Plattsburgh Housing Authority clarifying use of community rooms at senior housing centers and the policy adopted regarding rental fee.

2. Letter from the Chief of Police requesting the permanent appointment of a Police Detective effective September 3, 1999.

3. Letter from the Chief of Police recommending the permanent appointment of a Police Corporal effective September 3, 1999.

4. Letter from the Chief of Police requesting the appointment of a Police Officer effective September 9, 1999.

RESOLVED: That the correspondence as listed above is hereby ordered received and placed on file among the public records of the City Clerk's Office.

By Councilor _____, seconded by Councilor _____;

Discussion: _____

ACTION TAKEN:

Adopted _____ Defeated _____ Tabled _____ Withdrawn _____

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart

Follow up action: _____

F. Appointments -

1. MAYOR HANDS DOWN THE PERMANENT PROMOTION OF BRUCE MARTIN TO THE POSITION OF POLICE DETECTIVE EFFECTIVE SEPTEMBER 3, 1999, PENDING SUCCESSFUL COMPLETION OF A 12 WEEK PROBATIONARY PERIOD.

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart

2. MAYOR HANDS DOWN THE PERMANENT PROMOTION OF SCOTT W. BEEBIE TO THE POSITION OF POLICE CORPORAL EFFECTIVE SEPTEMBER 3, 1999, PENDING

RM 9/2/99

FROM:
Gifts/Donations
02-10-27-2707 \$25,350.00

TO:
Rec. Promotions
02-70-7180-7225-0-4440 \$25,350.00.

By Councilor _____; seconded by Councilor _____;

Discussion: _____

ACTION TAKEN:

Adopted _____ Defeated _____ Tabled _____ Withdrawn _____

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart

Follow up action: _____

2. RESOLVED: That the City of Plattsburgh herewith objects to the application by Hearst-Argyle--WPTZ Channel 5--to move their community of license location from North Pole, New York to Plattsburgh, New York, and be it further

RESOLVED: That the Common Council objects to the relocation of the station's transmitting tower from Terry Mountain to Mt. Mansfield, Vermont.

By Councilor _____; seconded by Councilor _____;

Discussion: _____

ACTION TAKEN:

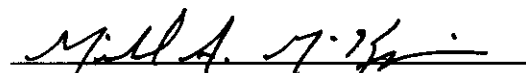
Adopted ☒ Defeated _____ Tabled _____ Withdrawn _____

Roll call, Councilors Hicks, Stewart, Berman, Penfield, O'Connell, Stewart
No No YES ABSENT YES YES

Follow up action: _____

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 1999, I caused a true copy of the foregoing "Reply Comments of Mt. Mansfield Television, Inc." to be served by hand delivery upon the persons listed on the attached service list marked with an asterisk, and by first-class mail upon all other persons listed.



Michael A. McKenzie

SERVICE LIST

*John Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Mark J. Prak
Coe W. Ramsey
Brooks, Pierce, McLendon, Humphrey
& Leonard, L.L.P.
First Union Capitol Center
Suite 1600
P.O. Box 1800
Raleigh, NC 27602

*International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036